

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KRZYSZTOF F. WOLINSKI,

Petitioner,

v.

GENA JONES, et al.,

Respondent.

No. 2:23-cv-0383 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 and a motion to proceed in forma pauperis. Petitioner complains that respondents are denying him Halal meals in violation of his First Amendment rights to freedom of religion. For relief, petitioner seeks an order requiring respondents to provide those meals.

Petitioner's allegations are not cognizable in a federal habeas case. "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody." Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). "Habeas corpus proceedings are the proper mechanism for a prisoner to challenge the 'legality or duration' of confinement. A civil rights action ... is the proper method of challenging 'conditions of ... confinement.'" Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser, 411 U.S. at 484, 498-99); see also Nelson v. Campbell, 541 U.S. 637, 643

1 (2004) (“[C]onstitutional claims that merely challenge the conditions of a prisoner's confinement,
2 whether the inmate seeks monetary or injunctive relief, fall outside of that core [of habeas corpus]
3 and may be brought pursuant to § 1983 in the first instance.”); Muhammad v. Close, 540 U.S.
4 749, 750 (2004) (“Challenges to the validity of any confinement or to particulars affecting its
5 duration are the province of habeas corpus ...; requests for relief turning on circumstances of
6 confinement may be presented in a § 1983 action). Petitioner does not challenge the legality or
7 duration of his custody. Petitioner’s allegation that he is being denied Halal meals is a challenge
8 to the conditions of his confinement and should be raised, if at all, in a civil rights action.

9 The court may, in appropriate circumstances, convert a habeas petition to a civil rights
10 action under 42 U.S.C. § 1983. Nettles v. Grounds, 830 F.3d 922, 936 (9th Cir. 2016). This
11 court finds it would be inappropriate to convert this case because there are several significant
12 differences between a habeas corpus proceeding and a civil rights action. For instance, the filing
13 fee for a habeas petition is \$5, and if leave to proceed in forma pauperis is granted, the fee is
14 forgiven. For civil rights cases, however, the fee is \$402 and under the Prisoner Litigation
15 Reform Act the inmate is required to pay \$350, even if granted in forma pauperis status, by way
16 of deductions from income to the inmate’s trust account. See 28 U.S.C. 1915(b)(1). An inmate
17 who might be willing to file a habeas petition for which he or she would not have to pay a filing
18 fee might feel otherwise about a civil rights complaint for which the fee would be deducted from
19 income to his or her account if granted in forma pauperis status. Further, court records show that
20 petitioner has been found to be a three-strikes litigant under 28 U.S.C. § 1915(g). See Wolinski
21 v. Allison, No. 2:22-cv-0451 KJM EFB P (Order filed July 15, 2022). To be granted in forma
22 pauperis status in a civil rights action, a three-strikes litigant must demonstrate “imminent danger
23 of serious physical injury” at the time of filing. 28 U.S.C. § 1915(g).

24 Based on the differences between habeas and civil rights cases, rather than construe the
25 petition as a civil rights action, this court will recommend dismissal without prejudice so that
26 petitioner may assert claims under 42 U.S.C. § 1983 in a new case, if he chooses.

27 On March 10, petitioner filed a “Request for Clarification.” He expresses his concern that
28 documents sent to him by the Clerk of the Court indicate the court is treating his case as a civil

1 right action under 42 U.S.C. § 1983. That is not the case. The documents provided to petitioner
2 are simply those provided to every incarcerated litigant bringing a civil case. A petition for a writ
3 of habeas corpus brought by a state prisoner is considered a civil case. Harris v. Nelson, 394 U.S.
4 286, 293 (1969) (“habeas corpus proceedings are characterized as ‘civil’”). That said, for the
5 reasons set forth above, this court now finds the claims raised by petitioner should be brought in a
6 civil rights action, not a habeas corpus petition.

7 Accordingly, IT IS HEREBY ORDERED that:

8 1. Petitioner’s motion to proceed in forma pauperis (ECF No. 2) is denied as moot;


9 2. To the extent petitioner simply requests clarification of documents provided to him by
10 the Clerk of the Court, that request (ECF No. 5) is granted. As explained above, actions by the
11 Clerk of the Court did not classify this case as a civil rights action.

12 3. The Clerk of the Court shall randomly assign a district judge to this case.

13 Further, IT IS RECOMMENDED that this case be dismissed without prejudice to its
14 renewal, if at all, as a civil rights action under 42 U.S.C. § 1983.

15 These findings and recommendations will be submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
17 being served with these findings and recommendations, petitioner may file written objections
18 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and
19 Recommendations.” Petitioner is advised that failure to file objections within the specified time
20 may result in waiver of the right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d
21 1153 (9th Cir. 1991).

22 Dated: March 20, 2023

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26 DEBORAH BARNES
27 UNITED STATES MAGISTRATE JUDGE
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